

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

08/29/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 06/16/2005.

TITLE: Atlantic Highly Migratory Species Vessel and Gear Marking

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0373

EXPIRATION DATE: 08/31/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	12,696	7,199	161
New	12,695	7,134	277
Difference	-1	-65	116
Program Change		0	0
Adjustment		-65	116

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No 6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

SUPPORTING STATEMENT
ATLANTIC HIGHLY MIGRATORY SPECIES VESSEL AND GEAR MARKING
OMB CONTROL NO.: 0648-0373

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

This Supporting Statement is submitted as part of a Paperwork Reduction Act information collection to meet regulatory vessel marking and gear marking requirements in fisheries for Highly Migratory Species (HMS). This request is for an extension of a currently approved collection that is a comprehensive collection for vessel and gear marking for all HMS vessels. The information collection regarding vessel marking would not apply to recreational fishing vessels that possess an HMS Angling permit. However, fishing gear marking would apply to vessels with an HMS Angling permit.

Enforcement:

The success of fisheries management programs depends significantly on regulatory compliance. The ability to link fishing or other activity to a vessel owner or operator is crucial to enforcement of the regulations issued under the authority of the Magnuson Stevens Fishery Conservation and Management Act (MS Act) which governs domestic fishing and under the authority of laws implementing international treaties. The purpose of this collection of information is to ensure that vessels and fishing gear can be readily identified by enforcement officials and fellow fishermen in compliance with the MS Act and U.S. obligations under the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971). The Atlantic Tunas Convention Act (ATCA) requires the Secretary of Commerce (Secretary) to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). Preventing illegal, unregulated, or unreported (IUU) fishing is paramount to upholding domestic statutes and maintaining compliance with ICCAT obligations. Vessel and gear identification are an integral component of enforcing fisheries laws and ensuring that IUU fishing is eliminated. The authority to issue these regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries of NOAA. Section 971 d.(c)(3) of ATCA provides the statutory authority to require the collection of information necessary to implement the recommendations of ICCAT.

Vessel marking allows enforcement agents to document fishery violations from the air, thus eliminating the need to board a vessel. This may protect finfish (both target and non-target species) as well as marine mammals and sea birds. Gear marking also eliminates the need for enforcement agents to document the violation through watching the gear being hauled. For example, if marked pelagic longline gear is in a closed area, an enforcement agent does not need to wait for a vessel to come collect the gear. This reduces costs for both the U.S. Coast Guard (USCG) and NMFS Office of Law Enforcement. There are also safety benefits of gear and vessel identification as it facilitates locating missing vessels.

Protected Species

In order to monitor compliance with the Marine Mammal Protection Act and the Endangered Species Act, it is necessary to identify entanglements of protected species with fishing gear. If an entanglement is reported while the gear is unattended, NMFS can investigate the details of the entanglement with the owner of the gear. The marking of fishing gear is also valuable in actions concerning damage, loss, and civil proceedings.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The vessel identification number provides law enforcement personnel with a means to monitor fishing and other related activities to ascertain whether the vessel's observed activities are in accordance with those authorized for that vessel. The regulations at 50 CFR Part 635.6 (a and b) state that vessels must paint their vessel identification number on the port and starboard sides of the vessel and on an appropriate weather deck in 10-18 inch (depending on vessel length) block letters or Arabic numerals so as to be clearly observed by enforcement vessels or aircraft. NMFS, USCG, and other state or Federal enforcement agencies in issuing violations, prosecutions, and other enforcement actions and to investigate protected species entanglements use the identifying number. Vessels that qualify for particular fisheries are readily identified through a permit database, and this allows for more cost-effective enforcement (fly-overs vs. vessel boardings). Fishermen may also use the number to report suspicious or unusual activities that they observe.

In handline and harpoon fisheries for HMS, it is sometimes necessary to tie a fish off to a float for a short time before the vessel can retrieve the fish. In such cases it is necessary to identify the vessel engaged in fishing, hence the requirement for float marking. In the pelagic longline fishery for HMS, radio beacons called high-fliers and terminal buoys are used to locate the line upon retrieval and maintain the gears location in the water column. Shark nets and bottom longlines also use floats to control the fishing gear. The regulations at 50 CFR Part 635.6 (c) state that the vessels name and registration number (or HMS permit number) must be displayed on the terminal floats and high-flyers for pelagic longline gear and gillnet gear (floats only) or each float attached to a handline or harpoon in 1 inch block letters or Arabic numerals.

Law enforcement personnel rely on this information to assure compliance with fisheries management regulations. Gear that is not properly identified is confiscated. NMFS, the USCG, and other marine agencies in issuing violations, prosecutions, and other enforcement actions use the identifying number on fishing gear. Gear marking helps ensure that a vessel harvests fish only with its own gear and does not transfer gear to other vessels. It also helps to enforce closed areas. Gear violations are more readily prosecuted, and this allows for more cost-effective enforcement. Cooperating fishermen also use the number to report placement of gear in unauthorized areas, gear conflicts, lost gear, and protected species entanglements.

Regulation-compliant fishermen ultimately benefit as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

The information collected will not be disseminated to the public, as it consists solely of marking gear and/or vessels with the appropriate vessel or permit number. This information is not submitted to NMFS.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This collection of information does not involve the use of automated, electronic, mechanical, or other technological techniques. The requirement that fishing vessels and fishing gear be marked with an identifying number does not lend itself to information processing technology. However, these and other HMS regulations will be available on the HMS website at: <http://www.nmfs.noaa.gov/sfa/hms/>.

4. Describe efforts to identify duplication.

There is no duplication with other collections.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Nearly all vessels in the HMS fisheries are categorized as small businesses. The collection will not have a significant impact on small businesses, and no special modifications of the requirements were considered necessary to accommodate the needs of small businesses.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

NMFS could not enforce the fisheries management measures if the collection were not conducted or were conducted less frequently. The vessel identification number provides law enforcement personnel with a means to monitor fishing and other related activities to ascertain whether the vessel's observed activities are in accordance with those authorized for that vessel. The ability to link fishing or other activity to a vessel owner or operator is crucial to enforcement of the regulations issued under the authority of the Magnuson Stevens Fishery Conservation and Management Act (MS Act) which governs domestic fishing and under the authority of laws implementing international treaties.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances require the collection to be conducted in a manner inconsistent with the OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and

recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited public comment on this collection and was published on February 7, 2005, (70 FR 6420). There were no public comments received related to this proposed information collection.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are to be offered as part of this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

There is no confidentiality, since this is a display requirement.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No information of a sensitive nature is requested.

12. Provide an estimate in hours of the burden of the collection of information.

Vessel Marking

As of October 2004, there are 9,207 commercial permit holders in the Atlantic tuna fishery, 1,700 also have NMFS Northeast Regional Office permits and thus are covered under that vessel marking collection. This leaves 7,507 Atlantic tuna permit holders that would need to be covered by the HMS vessel marking collection. The total number of vessels fishing for swordfish and sharks using longline gear in the U.S. economic zone (EEZ) is estimated at approximately 883, and includes 436 directed and 447 incidental permits. It is further estimated that approximately 65% of these longline vessels have Southeast Regional Office permits for additional fisheries and would thus be covered under the vessel marking collection for those fisheries. This leaves about 310 longline vessels, plus an estimated 96 vessels that catch swordfish with handgear, to be covered by the HMS vessel marking collection. Estimated time to mark each vessel is 45 minutes.

Total annual burden for marking tuna vessels:

7,507 vessels @ 45 minutes = 5,631 hours

Total annual burden for marking directed and undirected swordfish and shark vessels:

406 vessels @ 45 minutes = 305 hours

Total number of respondents: 7,913 vessels

Total number of responses: 7,913 x 1 = 7,913

Total annual vessel marking burden hours for HMS: 7,913 * 45 minutes = 5,936 hours

It is estimated that the combination of weather and water exposure will result in painting once per year to maintain legibility.

Gear Marking

Handgear: The total number of vessels fishing for HMS using handline or harpoon gear in the EEZ is estimated at approximately 145, based on 49 vessels with Atlantic tuna harpoon permits and 96 vessels with swordfish handgear permits. Furthermore, charter/headboat permit holders and HMS Angling permit holders are authorized to use handlines, which may require a buoy. These vessels are required to declare which authorized gear type they intend to use for the upcoming fishing season. Of the HMS Angling permit holders only 91 of 21,219 use handline gear (0.42%), with the remainder using rod and reel. This proportion will also be used to calculate the potential gear marking burden for Charter Headboat permit holders as a proxy. Estimated time to mark each float is 15 minutes.

Annual burden hours for marking HMS commercial handgear:

145 vessels x 2 floats @ 15 minutes = 73 hours

Annual burden hours for marking HMS Charter Headboat Handline Gear:

3,881 permit holders x 0.42% of CHB vessels using handline gear (16 vessels) x 1 buoy x 15 minutes/buoy = 4 hours

Annual burden hours for marking HMS Angling Handline Gear

91 HMS Angling permit holders employing handgear x 1 buoy x 15 minutes/buoy = 23 hours

Total number of respondents: 252 vessels

Total number of responses: 397 responses

Total burden hours for handgear marking: 100 hours

Longline Gear: The total number of vessels using pelagic longline gear in the EEZ is estimated at approximately 213, based on preliminary numbers of permits to be issued under a directed limited access program for tunas. These vessels are also required to have permits for swordfish and sharks. In the pelagic longline fishery for HMS, up to thirteen radio beacons called high-fliers are used to monitor each longline set. Furthermore, there are 241 vessels permitted to target sharks with bottom longline gear and 348 vessels that may harvest sharks incidentally. In addition, in both the pelagic and the bottom longline fishery for HMS, the terminal floats must be marked. Estimated time to mark each high-flier or float is 15 minutes.

Annual burden for marking HMS pelagic longline gear (tunas and swordfish):

213 vessels x 13 high-fliers @ 15 minutes = 693 hours

213 vessels x 2 terminal floats @ 15 minutes = 107 hours

Annual burden for marking HMS bottom longline gear (sharks):

589 vessels x 2 terminal floats @ 15 minutes = 295 hours

Total annual burden hours for marking HMS longline gear:

= 1,095 hours

Total number of respondents: $213 + 589 = 802$ vessels

$213 \text{ vessels} \times (13 \text{ high-fliers} + 2 \text{ terminal floats}) = 3,195 \text{ responses}$

$589 \text{ vessels} \times (2 \text{ terminal floats}) = 1,178 \text{ responses}$

Total number of responses for marking HMS longline gear = 4,373 responses

Shark net gear: Currently, 6 vessels participate in the drift gillnet fishery for sharks. The use of drift nets for tunas and swordfish has been banned. Therefore, those vessels are not included in this PRA collection. In the gillnet fishery for sharks, terminal floats must be marked. Estimated time to mark each float is 15 minutes.

Annual burden for marking shark net gear:

Six vessels x 2 floats @ 15 minutes = 3 hours.

Total number of respondents: 6 vessels

Total number of responses: $6 \text{ vessels} \times 2 \text{ floats/vessel} = 12 \text{ responses}$

Total gear marking burden hours for all HMS gear: 1,198 hours

Total number of respondents for all HMS gear: 1,060 respondents

Total number of responses for all HMS gear: 4,782 responses

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

The cost to fishermen for vessel marking and gear marking is minimal. Materials needed are paint and paintbrush or applicator, and possibly a stencil. The total cost of materials per vessel is about \$35 per year. It is estimated that the combination of weather and water exposure will result in painting once per year to maintain legibility. Total annual cost is estimated at: $7,913 \text{ vessels} \times \$35 = \$276,955$, assuming vessels use the same materials for painting their vessels and gear. The reason for the increase of \$115,935 is because of increasing costs for supplies, including paint and paintbrushes. It is assumed that vessels could use the same materials for both vessel and gear marking, if necessary.

14. Provide estimates of annualized cost to the Federal government.

There is no cost to the Federal Government.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The hours and costs have been adjusted to reflect current numbers of permit holders that may potentially be affected by the vessel and gear marking requirements. Anglers in possession of HMS Angling permit which allows the use of handgear (rod and reel, harpoon, and handline) for

the harvest of sharks, tunas, swordfish, and billfish can use handlines, which would be subject to the gear-marking requirement. However, an overwhelming majority (approximately 99.5%) of these permit holders fish with rod and reel which would not require gear marking as described in this supplemental statement. The potential exists for these permit holders to employ handline gear, however, the burden is calculated using this estimate for the HMS Angling permit holders and was used as a proxy for the Charter Headboat permit holders. Furthermore, the annual reporting and recordkeeping cost burden has been updated due to reflect the increased costs of materials.

16. For collections whose results will be published, outline the plans for tabulation and publication.

No results are published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

No exceptions are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

§ 635.6

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made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, whenever they exist. An agent of a person issued a vessel or dealer permit under this part, or anyone responsible for off-loading, storing packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

(f) *Additional data and inspection.* Additional data on fishing effort directed at Atlantic HMS or on catch of Atlantic HMS, regardless of whether retained, may be collected by contractors and statistical reporting agents, as designees of NMFS, and by authorized officers. A person issued a permit under § 635.4 is required to provide requested information about fishing activity, and a person, regardless of whether issued a permit under § 635.4, who possesses an Atlantic HMS is required to make such fish or parts thereof available for inspection by NMFS or its designees upon request.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37704, July 13, 1999; 66 FR 30653, June 7, 2001; 66 FR 42804, Aug. 15, 2001]

§ 635.6 Vessel and gear identification.

(a) *Vessel number.* For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.

(b) *Vessel identification.* (1) An owner or operator of a vessel for which a permit has been issued under § 635.4, other than a permit for the Atlantic tunas Angling category, must display the vessel number—

(i) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(ii) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(iii) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length; at least 10 inches (25.4 cm) in height for all other vessels over 25 ft

(7.6 m) in length; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) in length or less.

(2) The owner or operator of a vessel for which a permit has been issued under § 635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.

(c) *Gear identification.* (1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses a handline, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas permit number on each float attached to a handline or harpoon and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

(3) In addition to gear marking requirements in this paragraph (c)(1), provisions on gear marking for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(b) of this title.

[64 FR 29135, May 28, 1999, as amended at 66 FR 42804, Aug. 15, 2001]

§ 635.7 At-sea observer coverage.

(a) *Applicability.* NMFS may select for observer coverage any vessel that has an Atlantic HMS, tunas, shark or swordfish permit issued under § 635.4. Vessels permitted in the HMS Charter/Headboat and Atlantic Tunas Angling and Charter/Headboat categories will be requested to take observers on a voluntary basis. When selected, vessels issued any other permit under § 635.4 are required to take observers on a mandatory basis.

(b) *Selection of vessels.* NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

(b) DISCRETIONARY PROVISIONS.--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

Sec. 971. Definitions

For the purpose of this chapter -

- (1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.
- (2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.
- (3) The term "conservation recommendation" means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section [971c](#)(a) of this title.
- (4) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.
- (5) The term "exclusive economic zone" means an exclusive economic zone as defined in section [1802](#) of this title.
- (6) The term "fishing" means the catching, taking, or fishing for or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.
- (7) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.
- (8) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.
- (9) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the

United States.

- (10) The term "Secretary" means the Secretary of Commerce.
- (11) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Sec. 971a. Commissioners

- (a) Appointment and number; selection of Chairman; rules of procedure; term
 - (1) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter [81](#) of title 5 and chapter [171](#) of title 28. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.
 - (2) Of the Commissioners appointed under paragraph (1) who are not governmental employees -
 - (A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and
 - (B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.
 - (3)
 - (A) The term of a Commissioner shall be three years.
 - (B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.
- (b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section [971b](#) of this title, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.
- (c) Compensation

The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners

or Alternate Commissioners.

- (d) Travel expenses
 - (1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
 - (2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

Sec. 971b. Advisory committee

- (a) There is established an advisory committee which shall be composed of -
 - (1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and
 - (2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)). Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
- (b)
 - (1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.
 - (2) The advisory committee shall elect a Chairman for a 2-year term from among its members.
 - (3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.
 - (4)
 - (A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.
 - (B) The Secretary and the Secretary of State shall furnish the advisory committee

with relevant information concerning fisheries and international fishery agreements.

- (5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.
- (6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

Sec. 971b-1. Species working groups

The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than seven members of the advisory committee and no more than four scientific or technical personnel, as considered necessary by the Commissioner.

Sec. 971c. Authority of Secretary of State; cooperative enforcement agreements

- (a) Recommendations from Commission

The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

- (b) Enforcement agreements

The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or exclusive economic zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or

tribunal of a foreign country.

Sec. 971d. Administration

- (a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

- (b) Primary enforcement responsibility

Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

- (c) Regulations and other measures to carry out Commission recommendations

- (1)

- (A) Upon favorable action by the Secretary of State under section [971c](#)(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.
- (B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations

made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

- (C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
- (2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.
- (3) The regulations required to be promulgated under paragraph (1) of this subsection may -
 - (A) select for regulation one or more of the species covered by the Convention;
 - (B) divide the Convention waters into areas;
 - (C) establish one or more open or closed seasons as to each such area;
 - (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
 - (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
 - (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
 - (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;
 - (H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the

Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

- (I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;
 - (J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and
 - (K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.
- (4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit -
 - (A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and
 - (B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.
 - (5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation

by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

- (6) Identification and notification. -
 - (A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall -
 - (i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;
 - (ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and
 - (iii) publish a list of those Nations identified under clause
 - () notify the President and the nation so identified,
 - (B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.
 - (7) Consultation. - Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will -
 - (A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;
 - (B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and
 - (C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.
- (d) Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish
 - (1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of

State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section [3\(16\)](#) [11](#) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(16))) in the Convention area.

- (2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.
-

Sec. 971e. Violations

- (a) In general

It shall be unlawful -

- (1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section [971d](#) of this title; or
- (2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section [971d](#) of this title, without regard to the citizenship of the person or vessel which took the fish.

- (b) Failure to furnish returns, records, or reports

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

- (c) Refusal of request to board and inspect vessel

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

- (d) Importation of ineligible species or species under investigation

It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section [971d](#)(c) or (d) (FOOTNOTE 1) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section [971d](#)(c) or (d) [11](#) of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such

entry under the terms of section [971d](#)(c) or (d) [\[1\]](#) of this title.

- (e) Sanctions

The civil penalty and permit sanctions of section [1858](#) of this title are hereby made applicable to violations of this section as if they were violations of section [1857](#) of this title.

- (f) Forfeiture

All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

- (g) Applicability of other laws

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

Footnotes

[\[1\]](#) See References in Text note below.

Sec. 971f. Enforcement

- (a) Particular powers

Any person authorized in accordance with the provisions of this chapter to enforce the provisions of this chapter and the regulations issued thereunder may -

- (1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this chapter or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;
- (2) arrest, with or without a warrant, any person who violates the provisions of this chapter or any regulation issued thereunder in his presence or view;
- (3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and
- (4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this chapter or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

- (b) International enforcement

To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section [971c](#)(b) of this title for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

- (c) Bonds or stipulations

Notwithstanding the provisions of section [2464](#) of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the

execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.

Sec. 971g. Cooperation in carrying out Convention

- (a) Federal and State agencies; private institutions and organizations

The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

- (b) Scientific and other programs; facilities and personnel

All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

- (c) Fishing operations and biological experiments

None of the prohibitions deriving from this chapter, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

- (d) State jurisdiction; preemption by Federal regulations

- (1) Except as provided in paragraph (2) of this subsection, nothing in this chapter shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.
- (2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this chapter to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State -
 - (A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this chapter, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or
 - (B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this chapter, or (ii) are not effectively enforced. If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this chapter within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-2291 Filed 2-4-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020205C]

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Vessel and Gear Marking

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Clark, Highly Migratory Species Management Division

(F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301-713-2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under current regulations at 50 CFR part 635.6, fishing vessels permitted for Atlantic Highly Migratory Species (HMS) must display their official vessel numbers on their vessels. Flotation devices attached to certain fishing gear must also be marked with the vessel's number to identify catch that is buoyed. These requirements are necessary for law enforcement and monitoring purposes. Specifically, all vessels owners that hold a valid HMS permit, other than an HMS angling permit, are required to mark their vessels with their vessel identification number. The numbers should be permanently affixed to, or painted on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. Furthermore, fishermen that use longline gear must mark high-flyers and terminal buoys with their vessel identification number. Gillnet fishermen must also mark their terminal buoys, and handgear or harpoon fishermen must mark all buoys attached to their gear with their vessel identification number.

II. Method of Collection

There is no form or information collected under this requirement. Official vessel numbers issued to vessel operators are marked on the vessel and on flotation gear, if applicable.

III. Data

OMB Number: 0648-0373.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (vessel owners); and individuals or households.

Estimated Number of Respondents: 8,700 vessels for vessel identification marking; and 24,064 permit holders for gear marking.

Estimated Time Per Response: 45 minutes/year to mark a vessel; and 15 minutes/year to mark a float.

Estimated Total Annual Burden Hours: 6,525 hours for vessel identification marking; and 6,877 hours for gear marking.

Estimated Total Annual Cost to Public: \$304,500.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 28, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-2293 Filed 2-4-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020205D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations